

IN THE  
SUPREME COURT OF THE UNITED STATES

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Jamel Ellerbee,  
Petitioner

v.

Annett Holdings, Inc. d/b/a TMC Transportation, et al.,  
Respondents

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On Petition For A Writ of Certiorari to  
The United States Court of Appeals  
For the Fourth Circuit

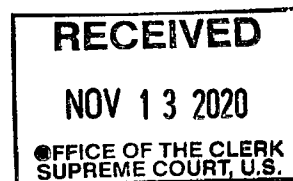
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**PETITION FOR REHEARING**

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November 9, 2020



## TABLE OF CONTENTS

|   | Page(s) |
|---|---------|
| Table of Authorities.....   | 2       |
| Grounds For Rehearing   |         |
| Intervening Circumstances.....  | 3       |
| Other Issues Not Raised   |         |
| I. USDOL, by final rule and action, is in direct violation of the Interstate Commerce<br>and Necessary and Proper Clauses of the US Constitution.....   | 3-5     |
| II. The Petition (submitted on July 30, 2020) and the USDOL proposed rule<br>(distributed on September 22, 2020) both seek to clarify independent contractors<br>under a specific Act, which shows the issue of classification to be both urgent and<br>necessary to the entire nation..... | 5-7     |
| Conclusion.....   | 7       |
| Certificate.....  | 8       |

## TABLE OF AUTHORITIES

Page(s)

### Constitutional Provisions

|                                   |   |
|-----------------------------------|---|
| <i>Article I, Section 8</i> ..... | 3 |
|-----------------------------------|---|

### Statutes, Regulations, Codes, and Acts

|  |       |
|--|-------|
| <i>49 U.S.C. § 31105</i> .....                       | 3     |
| <i>9/11 Commission Act (Public Law 110-53)</i> ..... | 3,5-7 |
| <i>29 C.F.R. § 1978.110(b)</i> .....                 | 4     |
| <i>49 U.S.C. § 31105 (D)</i> .....                   | 5     |
| <i>49 U.S.C. § 31105 (G)</i> .....                   | 5     |
| <i>49 U.S.C. § 31105 (J)</i> .....                   | 8     |

### Cases

|   |   |
|---|---|
| <i>Tinker Air Force Base v. FLRA</i> , 321 F.3d 1242, 1246 (10th Cir. 2002).....                          | 4 |
| <i>United States v. Wrightwood Dairy Co.</i> 315 U.S. 110 (1942).....                                     | 4 |
| <i>Blevins v. Director, Office of Workers' Comp. Programs</i> , 683 F.2d 139, 143 (6th Cir.<br>1982)..... | 4 |
| <i>Cf. High v. Lockheed Martin Energy Sys., Inc.</i> ARB No. 03-026, ALJ No. 96-CAA-8<br>(1998).....      | 6 |

## **GROUND FOR REHEARING**

### **Intervening Circumstances of a Substantial or Controlling Effect**

The Petition for Writ was filed on July 30, 2020 and there were 9 Justices on the US Supreme Court. On September 18, 2020 the Country suffered a loss of life from Honorable Justice Ruth Bader Ginsburg. Denial of the Petition for Writ of Certiorari occurred on October 16, 2020 containing a bench of only eight Justices. To be granted certiorari, the Rule of Four must be achieved. Gaining the interest of four Justices while eight are on the bench gives different odds than achieving the Rule of Four with nine Justices present. On October 26, 2020, Justice Amy Barrett was confirmed to the United States Supreme Court, which allows this issue of effect to be raised, timely, in an attempt to receive four votes under a full Court, as originally petitioned for. This Court does not reveal the number of votes a Petition achieves, therefore there is no way to know if one more Justice would have changed the outcome.

### **Other Issues Not Previously Raised**

**I. This Petition challenges the USDOL (by final rule and action), to be in direct violation of the Interstate Commerce and Necessary and Proper Clauses of the US Constitution while in care of STAA (49 U.S.C. § 31105) proceedings by departing from the desired goal of the legislation and causing a negative impact on interstate commerce.**

The power of Congress to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes," is contained within *Article I, Section 8*. Congress has updated the STAA Whistleblower statute's language with the *9/11 Commission Act*. USDOL is in repetitive violation of the directives from Congress, and, conduct themselves in unlawful capacity. USDOL's actions and rules, involving a STAA case, have a direct effect on

interstate commerce and must always follow the language and statutory intent from Congress. USDOL must recognize the STAA as separate from any other whistleblower statute(s) they are responsible for enforcing while addressing retaliation that occurs during the course of duty, operating or in control over a commercial motor vehicle.

USDOL arguing to the Fourth Circuit in this case, “the general rule is well established that reviewing courts will not overturn an agency’s strict application of its own procedural rules as long as the rule is applied uniformly or with reasoned distinctions,” Tinker Air Force Base v. FLRA, 321 F.3d 1242, 1246 (10th Cir. 2002), directly conflicts with legislation addressing application of any and all rules relative. All actions from the agency in this manner are unlawful and conflict negatively with the Interstate Commerce Clause. Congress has the full authority to direct USDOL exactly how to address STAA claims, and, USDOL should never deviate. “The commerce power is not confined in its exercise to the regulation of commerce among the states. It extends to those activities intrastate which so affect interstate commerce, or the exertion of the power of Congress over it, as to make regulation of them appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce.... The power of Congress over interstate commerce is plenary and complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution...”

United States v. Wrightwood Dairy Co., 315 U.S. 110 (1942).

In another instance, if no timely petition for review is filed, the resulting final order is not subject to judicial review,” (29 C.F.R. § 1978.110(b)) Blevins v. Director, Office of Workers’ Comp. Programs, 683 F.2d 139, 143 (6th Cir. 1982), is in direct conflict of the necessary and proper clause of the US Constitution by deviating from Congress’ updated language included

in the *9/11 Commission Act*. A timely filed petition in Circuit Courts have been fully addressed at *49 U.S.C. § 31105 (D)* which states, “A person adversely affected by an order issued after a hearing under subsection (b) of this section may file a petition for review, not later than 60 days after the order is issued, in the court of appeals of the United States for the circuit in which the violation occurred or the person resided on the date of the violation. Review shall conform to *chapter 7 of title 5*. **The review shall be heard and decided expeditiously.**” Circuit Court procedures have been addressed directly from Congress and “nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law or under any collective bargaining agreement. The rights and remedies in this section may not be waived by any agreement, policy, form, or condition of employment.” (*49 U.S.C. § 31105 (G)*). The management of the case at the Circuit Courts have deviated from the intended goal of Congress and also negatively affect interstate commerce.

The STAA is legislated to be the sole federal remedy to promote safe highway movement by restoration of the duties of the “employee”, timely. Every action and policy that has a negative impact on the ability, of an “employee” to perform their job, is in direct violation of the US Constitution due to also negatively affecting interstate commerce. Legal judiciary execution of the STAA, as legislated by Congress, would only allow STAA cases to be determined only by case law of other STAA cases, post *9/11 Commission Act*, as other statutes are not directly related to interstate commerce.

**II. This Petition (submitted on July 30, 2020) and the USDOL proposed rule (distributed on September 22, 2020) both seek to clarify independent contractors under a specific Act, which shows the issue of classification to be both urgent and necessary to**

**the entire nation.**

USDOL now seeks to classify independent contractors for the *Fair Labor Standards Act*, and, this Petition seeks interpretation of classification of independent contractors under the *Surface Transportation Assistance Act*, and, the broadened *9/11 Commission Act*.

Conflicts have created an “employee,” unable to obtain statutory retaliation protection from USDOL, while he is also an “employer,” subject to prosecution by the statute. In order to properly address retaliation, one must determine where the retaliatory actions come from.

A truck dispatcher advises the drivers employed by a commercial motor vehicle fleet on what exact procedures are necessary to complete the freight transportation, legally. The dispatcher is directly responsible for the safety of all trucks and drivers. Petitioner is on record as the head of the safety department and dispatcher of the commercial motor carrier involved in this movement of interstate commerce.

A truck dispatcher as an “employer”. An “employer” has “the ability to hire, transfer, promote, reprimand, or discharge the complainant, or to influence another employer to take such actions against a complainant, is evidence of the requisite degree of control.” Cf. High v. Lockheed Martin Energy Sys., Inc. ARB No. 03-026, ALJ No. 96-CAA-8 (1998).

A truck dispatcher as an “employee.” Congress directly addressed who is an “employee” as “a driver of a commercial motor vehicle (including an independent contractor when personally operating a commercial motor vehicle), a mechanic, a freight handler, **OR an individual not an employer, who – (1) directly affects commercial motor vehicle safety or security in the course of employment by a commercial motor carrier;** and (2) is not an employee of the United States Government, a State, or a political subdivision of a State acting in the course of employment.” (49 U.S.C. § 31105 (J)).

**This issue of classification, composed entirely of statutory interpretation, is of immediate need to be heard by the highest level of judiciary, within the United States, to preserve the productivity of interstate commerce.**

### **CONCLUSION**

This Petition guarantees to improve nationwide highway safety while truck crashes involving deaths have increased forty eight percent between 2009 and 2019 by solving antiquated practices, from USDOL and lower courts, that have strayed far away from the intended goal of Congress. The same damaging practices that developed in lower courts, since inception of the *STAA*, still occur and are being challenged as unconstitutional, unlawful, and departure from Congressional intent of the *9/11 Commission Act*, which places the agency in violation of the US Constitution under the Interstate Commerce and Necessary and Proper Clauses for negatively impacting interstate transportation.

**For the foregoing reasons, this Petition for Rehearing should be GRANTED.**

Respectfully,

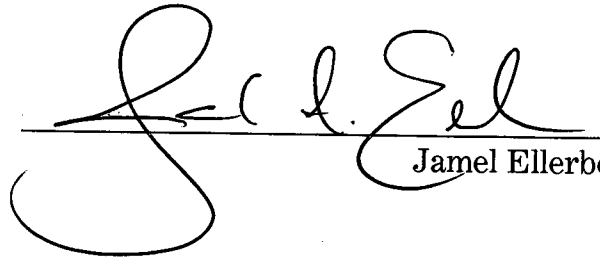
A handwritten signature in black ink, appearing to read 'J. Ellerbee', with a large, sweeping flourish at the end.

Jamel Ellerbee  
*Pro Se* Petitioner

November 9, 2020

CERTIFICATE

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay, and that it is restricted to grounds specified in Supreme Court Rule 44.2.



Jamel Ellerbee